IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1012 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARA - Appellant(s)
Versus
JASWANTBHAI PARSHOTTAMBHAI SHAH & 1 - Opponent(s)

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Appearance :
Mr.K.C.Shah, APP for Appellant(s) : 1,
MR BHARAT K DAVE for Opponent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 21/02/2007

CAV JUDGMENT

1. This is an appeal filed by the appellant State under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment and order

dated 3.9.1997 passed by the learned Metropolitan Magistrate, Court No.18, Ahmedabad in Criminal Case No.1162 of 1992, whereby the learned Metropolitan Magistrate had acquitted the accused from the offence punishable under Sections 467, 468, 471, 420, 380, 120(b) and 409 of IPC under Section 248(1) of Criminal Procedure Code.

2. The short facts giving rise to this appeal are such that :

The charge-sheet came to be filed to the effect that the accused, in collusion with each other, has hatched conspiracy and by committing forgery in the documents, though the documents were false, used the same as if they were true and misappropriated the amount of Rs.11,800/- from the account of accused no.3. After completion of the investigation, the chargesheet was filed for the offences punishable under Sections 467, 468, 471, 420, 120-B and 409 of the Indian Penal Code.

3. After receiving the complaint, summons were issued to the accused, the charge was framed against all the accused and as all the accused pleaded not guilty and claimed to be tried, after recording the evidence and hearing the learned counsel for both the sides, learned Magistrate acquitted the accused from the offence punishable under Sections 467, 468, 471, 420, 380, 120(b) and 409 of IPC under Section 248(1) of Criminal Procedure Code against which the present

appeal is filed.

4. Heard Mr.K.C.Shah, learned APP for the appellant – State and Mr.Bharat K.Dave for the respondents - accused.

5. The judgment is challenged on various grounds mentioned in para 6 of the memo of appeal. Mr.Shah, learned APP has taken me through the relevant part of the judgment and oral as well as documentary evidence led during the course of trial. Mr.Shah also submitted that it is settled law even under general criminal jurisprudence that Sections 105 and 106 of the Evidence Act place a part of the burden of proof on the accused to prove facts which are within his knowledge. When the prosecution establishes the ingredients of the offence charged, the burden shifts on to the accused to prove certain facts within his knowledge or exceptions to which he is entitled to.

6. On overall appreciation of evidence and considering the facts of the case, the trial Court has acquitted the accused from the charges levelled against them. The trial Court after considering the evidence on record came to the conclusion that it does not appear that the accused are involved in any manner in the offence in question and that for the forged signature of the witness – account holder Girdhari Puraji, the opinion of the expert is not

obtained and there is no evidence that the documents at Exhs.7 and 8 have been concocted by the accused and even to prove the same, the specimen signatures of the accused have also not been taken. The trial Court also came to the conclusion that there is no evidence that the accused have withdrawn the amount at any stage by doing the signature of the witness – account holder Girdhari Puraji. The trial Court also came to the conclusion that it does not transpire that the accused have committed the offence under Sections 409 and 420 of IPC and that the prosecution has failed to prove the same beyond reasonable doubt. It is the finding recorded by the learned Magistrate after considering the evidence on record that there is no clear evidence that Exh.10 remains in custody of the accused and, therefore, no offence under Section 380 of IPC is made out by the prosecution. So far as the offence under Section 120(b) of IPC is concerned, the learned Magistrate after considering the evidence on record came to the conclusion that it does not appear that there is criminal conspiracy to commit the aforesaid offence.

7. Having heard the learned counsel for the parties and having considered the finding recorded by the learned trial Judge, I am of the considered opinion that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondents/accused. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting both the respondents/accused

and the learned A.P.P., has failed to dislodge the reasons given by the learned Magistrate and convince this Court to take a view contrary to the one taken by the learned Magistrate. Therefore, there is no merit in the acquittal appeal, and the appeal deserves to be dismissed.

8. In view of the foregoing discussion, the following order is passed.

9. The appeal of the State is dismissed. The bail bond, if any, shall stand discharged.

(Sharad D.Dave,J)

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